

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }
ALFRED AND LOUISE WESSEL }

For Appellants: John R. Evans, Attorney at Law

For Respondent: Burl D. Lack, Chief Counsel;
Wilbur F. Lavelle, Associate Tax Counsel

O P I N I O N

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Alfred and Louise Wessel against a proposed assessment of additional personal income tax and penalty in the total amount of \$6,240.05 for the year 1949.

Appellant Louise Wessel and her mother, Anna Armstrong, both Ohio residents, each inherited a one-sixth interest in 934 acres of undeveloped California land, under the will of Harry Fryman who died on August 15, 1946. A cousin, Russell Wagener, received the remaining two-thirds interest.

On October 12, 1949, Mr. Wagener, who was a resident of California and the executor of Mr. Fryman's estate, negotiated a sale of the land to Chapman College. Louise Wessel received a purchase money note and deed of trust, in the amount of \$225,000, from Chapman College for her interest in the real estate. Beginning in 1949, the college made payments each year on its note until the sale price was fully paid in 1957.

Through Russell Wagener, Mrs. Wessel's husband asked the California accountant for the Fryman estate, a certified public accountant, whether there were any items of income or expense that Mrs. Wessel and her mother should take on their 1949 Income tax returns. The accountant's reply, dated February 13, 1950, set forth all of the income and expense data relative to the property and the sale. It did not specify, however, that a California return should be filed. Mrs. Wessel employed E. S.

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Evans, Sr., C.P.A., of Lima, Ohio, to prepare the necessary tax reports. Neither he nor anyone else filed a timely California nonresident personal income tax return reporting the sale of Mrs. Wessel's interest in the inherited property. Mr. Evans, Sr., has since passed away. The above mentioned letter from the California accountant was located in the files of his son, E. S. Evans, Jr., C.P.A.

Following an inquiry by the Franchise Tax Board, appellants filed a delinquent joint return for the year 1949 on December 13, 1960. In that return, appellants elected to report the gain from the sale of the California property, which was the sole amount subject to tax, on the installment basis. Respondent determined that appellants were not entitled to use the installment method and imposed a 25 percent penalty under section 13681 of the Revenue and Taxation Code.

The questions presented here, that is, whether appellants may use the installment method and whether the penalty applies, are the same as those decided this day by us in the Appeal of Estate of Anna Armstrong, Deceased: We find the facts in the two cases to be indistinguishable. Accordingly, appellants may use the installment method without penalty.

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Alfred and Louise Wessel against a proposed assessment of additional personal income tax and penalty in the total amount of \$6,240.05 for the year 1949, be and the same is hereby reversed.

Done at Sacramento, California, this 27th day of October, 1964, by the State Board of Equalization.

<u>Paul R. Leake</u>	Chairman
<u>John W. Lynch</u>	Member
<u>Richard Stein</u>	Member
_____	Member
_____	Member

Attest

W. H. Pearson

Secretary